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FACEBOOK, INC.

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION  
15

16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 ADAM GUERBUEZ; ATLANTIS BLUE  
20 CAPITAL; AND DOES 1-25,

21 Defendants.  
22  
23  
24  
25  
26  
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Case No. C08 03889 JF HRL

**FACEBOOK, INC.'S MOTION TO  
SHORTEN TIME FOR DEFAULT  
JUDGMENT HEARING**

Date:  
Time:  
Location: Courtroom 3, 5th Floor  
Judge: Hon. Jeremy Fogel

Pursuant to Civil Local Rules 6-1, 6-3, and 7-1, Plaintiff Facebook, Inc. ("Facebook") respectfully moves for an order shortening time for hearing on Facebook's Application For Default Judgment Against Adam Guerbuez And Atlantis Blue Capital. This Motion is based upon this Motion, the Memorandum of Points and Authorities, the Declaration of Thomas J. Gray In Support Of Facebook, Inc.'s Motion To Shorten Time For Default Judgment Hearing ("Gray Decl."), the Declaration Of Bernard Cantin In Support Of Facebook, Inc.'s Motion To Shorten Time for Default Judgment Hearing, the pleadings and files, and any other argument or evidence that may be presented on any hearing of this Motion.

By this Motion, Facebook respectfully requests that the Court hear Facebook's Application For Default Judgment Against Adam Guerbuez And Atlantis Blue Capital on November 21, 2008 or at its earliest convenience thereafter.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff Facebook hereby submits this Motion To Shorten Time For Default Judgment Hearing. Facebook seeks to have its Application For Default Judgment Against Adam Guerbuez And Atlantis Blue Capital considered by the Court on an expedited basis to prevent any further prejudice to its ability to collect on the judgment. Defendants have not appeared in this case or contacted Plaintiff Facebook. Accordingly, there exists no reason to treat Facebook's Application for a Default Judgment as a noticed motion and require that 35 days elapse prior to the hearing.

### **II. FACTS**

Defendant Guerbuez was hand served with the Complaint, Summons and all papers required for this matter (on behalf of himself and Atlantis Blue Capital) on August 14, 2008. *See* Proof of Service and Declaration Regarding Service (previously filed with this Court as Docket Nos. 5 & 6). Over two months have passed since Guerbuez was served with the Complaint. Yet, neither the Court nor Facebook have heard from Guerbuez. He has not appeared, answered, or responded in any way. *See* Gray Decl. ¶¶ 2 & 3. Despite Facebook's allegations, Guerbuez has

1 chosen to ignore this case. On October 7, 2008, the Clerk of this Court entered the default against  
2 Defendants.

3 After the default was entered on three separate occasions Facebook attempted to locate  
4 Defendant Guerbuez. Cantin Decl., ¶¶ 3-8. But, to no avail. Defendant Guerbuez is no longer  
5 frequenting the same places that he used to and he has not been seen. *Id.*

6 In light of the Entry of Default, on November 10, 2008 Facebook filed an Application For  
7 Default Judgment Against Adam Guerbuez And Atlantis Blue Capital (“Application”). Facebook  
8 seeks to have its Application considered and heard by the Court on an expedited basis.

### 9 **III. ARGUMENT**

#### 10 **A. A Full, Noticed Hearing Schedule Is Not Necessary.**

11 On October 7, 2008, the Clerk of this Court entered a default against Defendants, cutting  
12 off Defendants’ right to appear in the action or present evidence. *Great Am. Ins. Co. v. M.J.*  
13 *Menefee Constr., Inc.*, 2006 U.S. Dist. LEXIS 64902, \*6-\*7 (E.D. Cal. 2006) (“The Clerk of  
14 Court’s entry of default cuts off Defendants’ rights to appear in this action, file counterclaims, or  
15 to present a defense), citing *Clifton v. Tomb*, 21 F.2d 893, 897 (4th Cir. 1927); see also *Cohen v.*  
16 *Murphy*, 2004 U.S. Dist. LEXIS 25284, 2004 WL 2779942, \*1 (N.D.Cal. 2004) (‘Entry of the  
17 defendants’ default cuts off their right to appear in the action or to present evidence’); *Newhouse*  
18 *v. Probert*, 608 F.Supp. 978, 985 (D.C.Mich. 1985) (‘When a party is in default the party himself  
19 has lost his standing in court, cannot appear in any way, cannot adduce any evidence, and cannot  
20 be heard at the final hearing’); *In re Uranium Antitrust Litigation*, 473 F.Supp. 382, 386 (D.C. Ill.  
21 1979) (stating that ‘the defaulting defendant loses his standing to defend on the merits). Thus,  
22 even if they attempted to do so now, Defendants cannot participate in the case. Therefore, there  
23 is no need to put the hearing on Facebook’s Application for Default Judgment off for 35 days  
24 from the filing of the Application, and delay the resolution of this matter.

#### 25 **B. Delay Will Prejudice Facebook’s Ability To Collect On Its Judgment.**

26 Defendants were properly served with the Complaint. Therefore, they are well aware of  
27 these proceedings and their obligations. Yet they have chosen not to appear. Plaintiff Facebook  
28 is concerned that while Defendants have decided not to appear in this case, they have instead

1 opted to take measures to conceal their whereabouts and assets to avoid the effects of a judgment  
2 against them. Gray Decl., ¶ 4. If so, postponing the hearing for one month will give Defendants  
3 more time to hide their assets and will unnecessarily compound the prejudice that Facebook will  
4 suffer. Accordingly, Facebook requests that the Court grant its request to expedite the hearing in  
5 its Application.

6 **IV. CONCLUSION**

7 Facebook respectfully requests that the Court set Facebook's Application For Default  
8 Judgment Against Adam Guerbuez And Atlantis Blue Capital for hearing on November 21, 2008  
9 or at its earliest convenience thereafter.

10  
11 Dated: November 12, 2008

I. NEEL CHATTERJEE  
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14  
15 /s/ Thomas J. Gray

Thomas J. Gray  
Attorneys for Plaintiff  
FACEBOOK, INC.